

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 February 2005

on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters

(2005/370/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with the first sentence of the first subparagraph of Article 300(2), and the first subparagraph of Article 300(3), thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The UN/ECE Convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus Convention) aims at granting the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice regarding environmental matters.
- (2) Improvement of the public's access to information and a broader participation of the public in decision-making processes and access to justice are essential tools to ensure public awareness on environmental issues and to promote a better implementation and enforcement of environmental legislation. Thus, it contributes to strengthen and make more effective environmental protection policies.
- (3) The Aarhus Convention is open to ratification, acceptance, approval or accession by States and by regional economic integration organisations.

- (4) Under the terms of the Aarhus Convention, a regional economic integration organisation must declare in its instrument of ratification, acceptance, approval or accession, the extent of its competence in respect of the matters governed by the Convention.

- (5) The Community, in accordance with the Treaty, and in particular Article 175(1) thereof, is competent, together with its Member States, for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the objectives listed in Article 174 of the Treaty.

- (6) The Community and most of its Member States signed the Aarhus Convention in 1998 and since then have pursued their efforts in view of their approval of the Convention. In the meantime, relevant Community legislation is being made consistent with the Convention.

- (7) The objective of the Aarhus Convention, as set forth in its Article 1 thereof, is consistent with the objectives of the Community's environmental policy, listed in Article 174 of the Treaty, pursuant to which the Community, which shares competence with its Member States, has already adopted a comprehensive set of legislation which is evolving and contributes to the achievement of the objective of the Convention, not only by its own institutions, but also by public authorities in its Member States.

⁽¹⁾ Opinion delivered on 31.3.2004.

(8) The Aarhus Convention should be approved,

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of approval with the Secretary-General of the United Nations, in accordance with Article 19 of the Aarhus Convention.

At the same time, the designated person(s) shall deposit the declarations set out in the Annex to this Decision, in accordance with Article 19 of the Aarhus Convention.

HAS DECIDED AS FOLLOWS:

Article 1

The UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters, (Aarhus Convention) is hereby approved on behalf of the Community.

The text of the Aarhus Convention is attached to this Decision.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 17 February 2005.

For the Council

The President

J.-C. JUNCKER

ANNEX

DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH ARTICLE 19 OF THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

Moreover, the European Community declares that it has already adopted several legal instruments, binding on its Member States, implementing provisions of this Convention and will submit and update as appropriate a list of those legal instruments to the Depositary in accordance with Article 10(2) and Article 19(5) of the Convention. In particular, the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations.

Finally, the Community reiterates its declaration made upon signing the Convention that the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention.

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force.

The exercise of Community competence is, by its nature, subject to continuous development.

DECLARATION BY THE EUROPEAN COMMUNITY CONCERNING CERTAIN SPECIFIC PROVISIONS UNDER DIRECTIVE 2003/4/EC

In relation to Article 9 of the Aarhus Convention, the European Community invites Parties to the Convention to take note of Article 2(2) and Article 6 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information. These provisions give Member States of the European Community the possibility, in exceptional cases and under strictly specified conditions, to exclude certain institutions and bodies from the rules on review procedures in relation to decisions on requests for information.

Therefore the ratification by the European Community of the Aarhus Convention encompasses any reservation by a Member State of the European Community to the extent that such a reservation is compatible with Article 2(2) and Article 6 of Directive 2003/4/EC.
